

Message Text

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ORIGIN COME-00

INFO OCT-01 AF-06 EUR-12 EA-07 NEA-10 ISO-00 EB-07 OPIC-03

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FM SECSTATE WASHDC

TO AMEMBASSY LAGOS

INFO AMEMBASSY BERN

AMEMBASSY BONN

AMEMBASSY JIDDA

AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY TEHRAN

AMEMBASSY TOKYO

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E.O. 11652: N/A

TAGS: BEXP, NI

SUBJECT: MAJOR PROJECTS: UTILITY DROPS LETTER OF CREDIT

REF: STATE 284495; LAGOS 11350; PARIS 31244 NOTAL

SUMMARY:

1. WE HAVE RECEIVED NEGATIVE FEEDBACK FROM INDUSTRY AND
COMMERCIAL BANKING SOURCES REGARDING NEPA'S DECISION TO
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FORGO IRREVOCABLE LETTER OF CREDIT. EXIMBANK'S INSURANCE

PROGRAMS WILL NOT COVER U.S. SUPPLIERS UNDER THE CIRCUMSTANCES HOWEVER, THERE IS POSSIBILITY THAT OPIC'S PROGRAMS MAY OFFER ADEQUATE PROTECTION. CONSIDERING NIGERIA'S CURRENT DIFFICULTIES WITH LETTERS OF CREDIT FOR CEMENT WE ARE CONCERNED THAT NEPA'S ACTION MAY FURTHER LIMIT U.S. PARTICIPATION IN THE FMG'S DEVELOPMENT PROGRAM.

2. AS EMBASSY AWARE, THE STANDARD FORM OF PAYMENT IS A CONFIRMED IRREVOCABLE LETTER OF CREDIT IN FAVOR OF THE SUPPLIER. INDUSTRY AS WELL AS COMMERCIAL BANKS INDICATE THAT WITHOUT THIS FORM OF PAYMENT THEY WOULD BE VERY HESITANT TO ENTER INTO A CONTRACT UNDER THE TERMS SPECIFIED BY NEPA. THE BANKS WOULD RECOMMEND THAT THE

SUPPLIER NEGOTIATE A LARGE DOWN PAYMENT AS WELL AS A LEGAL BINDING AGREEMENT FOR PAYMENT TO SECURE AT LEAST SOME PROTECTION AGAINST DEFAULT.

3. INDUSTRY INFORMS THAT THE CURRENT STANDARD ON BONDING IS A BID BOND OF ONE TO TWO PERCENT OF THE VALUE OF THE BID AND A PERFORMANCE BOND OF SEVEN TO EIGHT PERCENT OF THE VALUE OF THE CONTRACT. IF NEPA IS ASKING FOR A COMBINED BID AND PERFORMANCE BOND OF TEN PERCENT THEN IT IS NOT ABNORMALLY HIGH. HOWEVER, IF THE BID BOND ALONE IS TEN PERCENT BOND THEN IT IS EXCEPTIONALLY HIGH.

4. EXIMBANK'S INSURANCE PROGRAMS COVER U.S. SUPPLIERS FOR 90 PERCENT OF THE EXPORT LOSS SUSTAINED BY DEFAULT OF A FOREIGN GOVERNMENT ENTITY BUT ONLY IF THE LOSS IS ATTRIBUTABLE TO THE CANCELLATION OF AN EXPORT LICENSE OR WAR AND INSURRECTION. IF NEPA DEFAULTS FOR ANY OTHER REASON EXIMBANK'S INSURANCE PROGRAMS WOULD NOT COVER THE U.S. SUPPLIER.

5. UNDER ITS CONSTRUCTION INSURANCE PROGRAM OPIC COULD INSURE A U.S. CONTRACTOR AGAINST A NEPA DEFAULT IF THE TENDER PROVIDES FOR SETTLEMENT OF DISPUTES THROUGH INTERNATIONAL ARBITRATION. OPIC MUST BE SATISFIED THAT THE FOREIGN EXCHANGE FINANCING IS AVAILABLE AND HAS LIMITED OFFICIAL USE

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BEEN COMMITTED TO THE CONTRACT. OPIC WOULD COVER UP TO 90 PERCENT OF AWARD TO THE CONTRACTOR IF NEPA FAILED TO PAY THE AWARD. ALSO, IF NEPA REFUSED TO FOLLOW CONTRACT'S DISPUTES PROCEDURES IN PROCESSING CLAIM BY CONTRACTOR, OPIC COULD PAY CONTRACTOR 50 PERCENT OF

AMOUNT CLAIMED. OPIC'S PROGRAMS COULD ALSO COVER THE U.S. CONTRACTOR AGAINST THE NIGERIANS ARBITRARILY

CALLING THE BID BOND.

6. CONSIDERING THAT OPIC'S PROGRAMS MAY OFFER ADEQUATE PROTECTION WE ARE ARRANGING A MEETING FOR WESTINGHOUSE TO DISCUSS THEIR PROPOSAL. WE HAVE NOT RECEIVED A FINAL RESPONSE FROM EITHER G.E. OR WESTINGHOUSE REGARDING WHETHER THEY WILL BID THE SUBSTATION.

7. ACTION REQUESTED: NEPA'S DECISION TO FORGO THE IRREVOCABLE LETTER OF CREDIT COMES AT A VERY BAD TIME CONSIDERING THE FMG'S CURRENT CEMENT PAYMENT PROBLEMS. WE SUGGEST EMBASSY RAISE OUR CONCERN WITH APPROPRIATE NEPA OFFICIALS EMPHASIZING THAT A CONFIRMED IRREVOCABLE LETTER OF CREDIT IS THE STANDARD OF INTERNATIONAL PAYMENT. IF NEPA IS SERIOUSLY INTERESTED IN COMPETITIVE

U.S. PROPOSALS THEY SHOULD CONSIDER ALTERNATIVE METHODS OF PAYMENT. KEEP US INFORMED OF DEVELOPMENTS.

8. FYI. G.E. TELLS US THAT FOR SOME TIME NEPA HAS REFUSED PAY VIA LETTER OF CREDIT, BUT WITHHOLDING FINAL PROGRESS PAYMENT WOULD BE NEW WRINKLE. TERMS OF G.E.'S SALE OF GAS TURBINES FOR INSTALLATION AT UGHELLI WERE 10-15 PERCENT DOWN PAYMENT WITH BALANCE IN CASH WHEN TURBINES ARRIVED LAGOS RPT LAGOS. G.E. POSTED 10 PERCENT BID BOND (WHICH HAD TO BE OBTAINED FROM NIGERIAN BANK) FOR UGHELLI AND SAPELE PROJECTS. G.E. INFORMANT REMEMBERS CLAUSE PERMITTING FORFEITURE IF BIDDER FAILS OR REFUSES TO ENTER INTO CONTRACT AFTER HIS BID ACCEPTED, BUT HE THINKS WORDING WHICH PERMITS FORFEITURE IF BID DEPARTS FROM SPECIFICATIONS IS NEW. DEPARTMENT COMMENT: AS EMBASSY AWARE, G.E. HAD LOW BID FOR THE SAPELE PROJECT, BUT FAILED TO MEET PRECISE SPECIFICATIONS AND DID NOT LIMITED OFFICIAL USE

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RECEIVE CONTRACT. NEPA MAY HAVE ADOPTED NEW CONDITIONS TO PREVENT REPETITION OF ITS EXPERIENCE WITH G.E.
END FYI. KISSINGER

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